



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

October 10,
2003

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis E. Breitzman
Area Manager
Bureau of Reclamation
Dakotas Area Office
P.O. Box 1017
Bismarck, ND 58501

Re: Administrative Order on Consent
Docket No. **SDWA-08-2004-0003**
PWS # 083890015

Dear Mr. Breitzman:

Enclosed is an Administrative Order on Consent ("Order") signed by both the EPA and the Bureau of Reclamation ("BOR") (hereafter referred to collectively as "the Parties"). The purpose of the Order is to address the Safe Drinking Water Act (SDWA) violations at the Four Bears Drinking Water Plant public water supply system ("System") on the Fort Berthold Indian Reservation.

The Order is issued under the authority of Section 1414(g) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300-3(g) *et seq.*, and its implementing regulations. The Order alleges, among other things, that the BOR is a public water supplier as defined by the SDWA in violation of the National Primary Drinking Water Regulations at 40 C.F.R. §§ 141.73(a)(1), 141.73(a)(2), 141.24(h), 141.21(a), 141.201-205, 141.31(d), 141.75(b)(3)(ii), 141.31(b), and 141.21(g)(2) for: failure to meet the monthly turbidity standard; exceedance of the 5 NTU turbidity level; failure to monitor for pesticide/herbicide organic contaminants; failure to monitor for total coliform bacteria; failure to provide public notice of the violations; and failure to report the violations to EPA within specified time periods.



Although EPA does not expect that the BOR will fail to comply with the terms of the enclosed Order, please note that violations of an order may lead to (1) a penalty of up to \$ 27,500 per day per violation of the Order in addition to any stipulated penalties that may apply, (2) a separate penalty for violating the regulations, and/or (3) a court injunction ordering compliance. EPA may choose to close the Order following a minimum compliance period of 3 years.

If your staff has any future questions or information to share, the most knowledgeable persons on this matter are Melanie Wasco, Environmental Protection Specialist at (303) 312-6540 and Elyana Sutin, Enforcement Attorney, at (303) 312-6899. A copy of the AOC will be forwarded by EPA to the Fort Berthold Tribal Business Council.

Your continued cooperation in resolving this matter is appreciated.

Sincerely,

SIGNED

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: Michelle Klose, BOR

IN THE MATTER OF)
)
Bureau of Reclamation)
Dakotas Area Office)
P.O. Box 1017)
Bismarck, ND 58501)
PWS ID# 083890015)
)
Respondent.) ADMINISTRATIVE ORDER
) ON CONSENT
Four Bears Water Treatment Plant)
Ft. Berthold Rural Water) Docket No. **SDWA-08-2004-0003**
P.O. Box 399)
New Town, ND 58763-9404)
)
Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. ' 300g-3(g))
)

This Administrative Order on Consent ("AOC") is entered into between Complainant United States Environmental Protection Agency Region 8 ("EPA") and Respondent United States Department of Interior, Bureau of Reclamation, pursuant to the authority vested in the Administrator of the EPA by Section 1414(g) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. ' 300g-3(g). Authority to take these actions has been properly delegated to the undersigned EPA officials.

FINDINGS

For the purposes of this AOC only, EPA and Respondent agree that:

1. EPA has primary enforcement authority for public water systems under the Act for non-tribally-owned facilities in which a Tribal Government has a substantial proprietary interest within Indian Country.
2. The Bureau of Reclamation ("Respondent") is a Federal Agency and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
3. Respondent owns the Four Bears Water Treatment Plant (the "System"), located on the Fort Berthold Indian Reservation for the provision to the public of piped water for human consumption. The Three Affiliated Tribes ("Tribe") manages and operates the System in accordance with a cooperative agreement with the Bureau of Reclamation.
4. The System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents and is therefore a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f (4), and a "community water system" within the meaning of 40 C.F.R. § 141.2.
5. Respondent owns a public water system and is therefore a "supplier of water" within the meaning of Section

1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. According to Section 1447(a) of the Act, 42 U.S.C. § 300j-6(a), each department, agency or instrumentality of the executive branch of the Federal Government that owns or operates any public water system is subject to and must comply with all Federal, State, interstate, and local requirements, both substantive and procedural, to the same extent as any person is subject to such requirements. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.

6. According to a June 4, 2002, sanitary survey conducted by an agent for EPA, the Four Bears Water Treatment Plant is supplied solely by a surface water source consisting of Lake Sakakawea on the Missouri River, which serves approximately 1063 persons daily and has 139 service connections.
7. 40 C.F.R. § 141.73(a)(1) specifies that the turbidity level of representative samples of a system using conventional filtration must be less than or equal to 0.5 Nephelometric Turbidity Units ("NTU") in at least 95 percent of the measurements taken each month, applicable to public water systems that use water

obtained from surface water or groundwater under the direct influence of surface water sources.

8. EPA obtained turbidity data for the dates March 1 through April 11, 2003, from the automatically collected data report of the Supervisory Control and Data Acquisition ("SCADA") system, which continuously collects the plant's operational information. The data show that 0.5 NTU was exceeded on March 28, 30 and 31, 2003, and April 1 through 11, 2003. EPA calculated the exceedence rate by averaging the highest daily NTU SCADA readings from each of the two filters. Since the 0.5 NTU turbidity level was exceeded on at least 11 days in April, no greater than 63% of the month's measurements would have achieved compliance regardless of whether the Respondent's public water system met the 0.5 NTU requirement for the remaining 20 days in April. Accordingly, the allowable turbidity level for April 2003 was exceeded, in violation of 40 C.F.R. § 141.73(a)(1).
9. 40 C.F.R. § 141.73(a)(2) specifies that the turbidity level of representative samples of a system using conventional filtration must at no time exceed 5 NTU, applicable to public water systems that use water

obtained from surface water sources.

10. Monitoring results from the Respondent's public water system's plant operational logs (data collected by the operators) showed that the turbidity level exceeded 5 NTU on April 6, 2003, in violation of 40 C.F.R. § 141.73(a)(2). The SCADA data recorded a maximum turbidity level of only 1 NTU on April 6, 2003, as a result of the programmable logic controller ("PLC") of the SCADA being pre-set to record no greater than 1 NTU for maximum filter effluent turbidity. Additionally, on March 30, and 31, 2003, and April 1 through 11, 2003, the automatically collected data report recorded a maximum of 1 NTU for turbidity. The actual maximum turbidity levels on those dates were not recorded due to the PLC setting.
11. 40 C.F.R. § 141.24(h) requires all community water systems to conduct initial sampling of the water consisting of four consecutive, quarterly samples during each three-year compliance period to determine compliance with the maximum contaminant level (MCL) for pesticide/herbicide organic contaminants as stated in 40 C.F.R. § 141.61(c).
12. Respondent failed to conduct initial sampling of the water for pesticide/herbicide organic contaminants for

the third quarter (July through September) of 2000, in violation of 40 C.F.R. § 141.24(h).

13. 40 C.F.R. § 141.21(a) requires public water systems to monitor the water that the system serves to the public at least twice per month to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
14. Respondent failed to have the required total of two samples of water analyzed for contamination by total coliform bacteria during the month of April 2003, in violation of 40 C.F.R. § 141.21.
15. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any national primary drinking water regulations "NPDWR") violations, including violations of the maximum contaminant level ("MCL"), maximum residual disinfection level ("MRDL"), treatment technique (TT), monitoring requirements, and testing procedures in 40 C.F.R. part 141. 40 C.F.R. § 141.202(a) and 141.202(b) require a Tier I public notice be conducted within 24 hours if turbidity levels exceed 5 NTU. 40 C.F.R. § 141.205 requires that the notice contain specific content and standard language. In addition, 40 C.F.R §

141.31(d) requires the water system to send a certification to EPA stating that it has fully complied with the public notification requirements, together with a copy of the notice, within 10 days of conducting the public notification.

16. Respondent failed to issue a Tier 1 public notice consistent with 40 C.F.R. § 141.202(a) and 141.202(b) within 24 hours after the April 6, 2003, turbidity violation in which the turbidity levels exceeded 5 NTU. The System issued the Tier I public notice on April 9, 2003.
17. Respondent failed to issue a Tier 3 public notice regarding the failure to monitor for pesticide/herbicide organic contaminants for the third quarter of 2000, as well as a Tier 3 public notice regarding the failure to analyze two samples for coliform bacteria in April 2003 in violation of 40 C.F.R. § 141.201. EPA did not receive copies of the two Tier 3 public notices, in violation of 40 C.F.R. § 141.31(d).
18. 40 C.F.R. § 141.75(b)(3)(ii) requires that EPA be notified within 24 hours after the System learns of the violation if the turbidity of finished drinking water exceeds 5 NTU.
19. Respondent did not notify EPA within 24 hours as

required after the turbidity exceeded 5 NTU on April 6, 2003, in violation of 40 C.F.R. § 141.75(b)(3)(ii).

20. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any National Primary Drinking Water Regulation (40 C.F.R. part 141) to EPA within 48 hours.

21. Respondent failed to report to EPA within 48 hours instances of noncompliance detailed in Findings paragraphs 8, 12, and 17 above, in violation of 40 C.F.R. § 141.31(b).

22. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement to report the violation to EPA within ten days after the system discovers the violation.

23. Respondent failed to report to EPA instances of noncompliance detailed in paragraph 14 of the Findings section, in violation of 40 C.F.R. § 141.21(g)(2).

ORDER

Based on the foregoing Findings and pursuant to the authority set forth in Section 1414(g) and 1447(a) of the Act, it is hereby ORDERED and AGREED that:

1. Upon the effective date of this AOC, Respondent shall comply with 40 C.F.R. § 141.73, requiring that the turbidity level of representative samples of a system's

filtered water must be less than or equal to 0.5 NTU in at least 95 percent of measurements taken each month and at no time exceed 5 NTU.

2. Upon the effective date of this AOC, Respondent shall comply with the pesticide/herbicide organic contaminant monitoring requirements of 40 C.F.R. § 141.24(h). The System last sampled in April 2002, and shall next sample for pesticide/herbicide organic contaminants at each entry point to the distribution system between January 1, 2005, and December 31, 2007, in compliance with 40 C.F.R. § 141.24(h).
3. Upon the effective date of this AOC, Respondent shall comply with the requirement of 40 C.F.R. § 141.21(a) to perform monthly bacteriological monitoring and have the samples analyzed. Respondent shall comply with the MCLs as stated in 40 C.F.R. § 141.63. Respondent shall ensure that the System reports analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).
4. No later than 24 hours after the System learns of a turbidity violation in which the turbidity exceeds 5 NTU, as specified in 40 C.F.R. § 141.73 and outlined in paragraphs 15 and 16 of the Findings section in this

AOC, Respondent shall ensure that the System (1) provides notice to the public of the violation(s), and (2) initiates consultation with EPA to determine additional public notice requirements, in order to return to compliance with 40 C.F.R. §§ 141.201, 141.202 and 141.205. This public notice shall be given in one or more of the following forms of delivery: (a) Appropriate broadcast media (such as radio and television); (b) Posting of the notice in conspicuous locations throughout the area served by the water system; (c) Hand delivery of the notice to persons served by the water system; or (d) Another delivery method approved in writing by EPA. Respondent shall comply with any additional public notification requirements that are established as a result of the consultation, as noted in (2) above, with EPA. Upon the effective date of this AOC, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall ensure that the System submits a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

5. Respondent shall comply with 40 C.F.R. §

141.75(b)(3)(ii) by ensuring that the System notifies EPA within 24 hours of the System learning that the turbidity of finished drinking water exceeds 5 NTU.

6. Upon the effective date of this AOC, Respondent shall comply with 40 C.F.R. § 141.31(b) by ensuring that the System reports to EPA within 48 hours any failure to comply with the National Primary Drinking Water Regulations at 40 C.F.R. part 141.
7. Upon the effective date of this AOC, Respondent shall comply with 40 C.F.R. ' 141.21(g)(2) by ensuring that the System reports any failure to comply with coliform monitoring requirements under 40 C.F.R. § 141.21 to EPA within ten days after the system discovers the violation.
8. Within 30 days of the effective date of this AOC, Respondent shall submit a schedule to EPA for providing the System's operators with standing operating procedures ("SOPs") and training on basic plant operations including operation and maintenance of the filtration equipment, chemical addition, jar testing, recording plant operational data, instrument calibration and maintenance, and completion of monthly compliance reports, to ensure that the system is operated by qualified personnel as required by 40 C.F.R. § 141.70(c). No later than one year of the effective date of this AOC, the above-referenced SOPs and training shall be completed. Within 10 days of completion, Respondent shall provide EPA with a final copy of the SOPs and

certification that all operators have completed training.

Respondent further agrees to provide EPA with draft copies of the SOPs as available for EPA review and comment.

9. Within 90 days of the effective date of this AOC, Respondent shall modify the treatment plant controls to ensure that the System's automatic shutdown mechanism and auto-dialer mechanism are capable of shutting down the system and alerting an operator that the WTP has shut down under emergency conditions once turbidity as measured at either filter supplying water to the clear well reaches 0.5 NTU.
10. Within 90 days of the effective date of this AOC, Respondent shall ensure that the System is fully calibrated, including but not limited to the turbidimeter, all instruments and SCADA settings. Once calibrated, Respondent shall ensure that routine calibration occurs per the manufacturer's specifications and calibration is made by an authorized representative of Respondent.
11. Upon the effective date of this AOC, Respondent shall comply with 40 C.F.R. § 142.34(a) by ensuring that EPA, or a designated representative of EPA, upon presenting appropriate credentials and a written notice of inspection, is provided access to enter Respondent's public water system facility to determine compliance with the Act. Such inspection may include inspection, at

reasonable times, of records, files, papers, processes, controls and facilities, or testing of any feature of a public water system, including its raw water source.

STIPULATED PENALTIES

1. Respondent shall pay stipulated penalties to the United States according to the following schedule for failure to satisfactorily perform or complete any action item set forth in the AOC in accordance with the terms and time frames specified:

Days 1-10	\$50 per day
Days 11-30	\$100 per day
After 31 days	\$1,000 per day

2. Stipulated penalties shall be assessed per requirement and begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or correction of noncompliance.

3. Respondent shall pay stipulated penalties not more than 60 days after receipt of written demand from EPA for such penalties. Payment shall be in the form of a cashier's or certified check, made payable to "Treasurer, United States of America," and submitted to:

EPA-Region 8
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, PA 15251

4. Payment shall reference the name and address of Respondent and the EPA docket number. Respondent shall provide a copy of the check, or other

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verification of payment, to the EPA representative identified in paragraph 1
of the General Provisions section.

FORCE MAJEURE

1. If any event occurs which causes or may cause delays in complying or completing any or all of the action items set forth in the Order section above, or in the Compliance Schedule submitted pursuant to paragraph 8 of the Order section, Respondent shall notify Complainant in writing within 10 days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

2. If the Parties agree that the delay or anticipated delay in compliance with any condition of this AOC has been or will be caused by circumstances entirely beyond the control of the Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.

3. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this AOC has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision

and any delays in compliance shall not be excused. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent.

4. In the event that a dispute arises under this Consent Agreement the Parties agree first to make reasonable efforts to informally resolve disputes as expeditiously as possible.

However, if resolution cannot be achieved informally, the Parties agree to refer the matter, through dispute resolution proceedings, as defined and governed by 5 U.S.C. Section 571 et seq., for timely resolution. All disputes arising under this Agreement that cannot be resolved informally amongst the Parties shall be submitted to a neutral party available through the Federal Mediation and Conciliation Service or other available Department of Interior or EPA agency dispute resolution techniques. Reimbursement of and general compensation for the neutral shall be paid equally by all Parties involved in each individual dispute referred for resolution.

GENERAL PROVISIONS

1. Reporting requirements specified in this AOC shall be mailed to:

Melanie Wasco
U. S. EPA Region 8 (8ENF-T)
999 18th Street, Suite 300
Denver, Colorado 80202-2466

2. This AOC does not relieve the owner or operator of any responsibilities or liabilities established pursuant to any applicable federal, state or local law.

3. Respondent waives its right to a hearing on the matters contained herein pursuant to Section 1414(g) of the Act.

4. Each undersigned representative of the Parties to this AOC certifies that he or she is fully authorized by the Party represented to enter into the terms and conditions of this AOC and to execute and legally bind that Party to it.

5. This AOC may be amended or modified only by written agreement executed by both Parties and incorporated into an amended AOC.

6. Respondent consents to EPA's jurisdictional authority specified in this AOC.

7. This AOC shall be a complete and final settlement of the specific violations alleged herein.

Bureau of Reclamation, Four Bears PWS
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8. Correspondence to Reclamation pertaining to this AOC should
be addressed to:

Area Manager
Bureau of Reclamation
P.O. Box 1017
Bismarck, ND 58501

RESERVATION OF RIGHTS

1. This AOC does not constitute a waiver, suspension, or modification of the requirements of the Act or its implementing regulations set forth at 40 C.F.R. § 141.1 et seq., which remain in full force and effect. Issuance of this AOC is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.

2. EPA reserves the right to pursue an administrative action against the operator and civil penalties from the owner after first collecting stipulated penalties, in accordance with the section above, if the stipulated penalties fail to remedy the violation of the AOC or the violation continues.

3. Violation of any requirement of the Act or its implementing regulations not otherwise covered under this AOC may subject Respondent to an administrative civil penalty not to exceed \$25,000 per day of violation, under Section 1447(b) of the Act, 42 U.S.C. § 300j-6(b).

EFFECTIVE DATE AND DURATION OF AOC

This AOC shall become effective 10 days after the date of issuance. Three years after the effective date, Respondent may request termination of this AOC. Upon approval by Complainant, the AOC may be terminated.

SO CONSENTED TO AND AGREED:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 10/08/03

By: David J. Janik
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 6 October 2003

By: SIGNED
Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Bureau of Reclamation
Respondent.

Date: 9/30/03

By: SIGNED
Dennis E. Breitzman, Area Manager
Bureau of Reclamation

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON OCTOBER 14, 2003.